THE ROLE OF COMMERCIAL ARBITRATION IN RESOLVING DISPUTES IN THE REAL ESTATE SECTOR IN SELECTED INDIAN CITIES: A CRITICAL ANALYSIS OF ALLIED ACTS AND RECENT CASE LAWS

Synopsis of the Research Proposal

Submitted for the Registration in the

Ph.D. Programme (Part-time) in Law

By

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LIST OF ABBREVIATIONS

❖ AHP	Affordable Housing in Partnership
❖ CAGR	Compound Annual Growth Rate
❖ CLR	Computerisation of Land Records
❖ CoC	Committee of Creditors
❖ CREDAI	Confederation of Real Estate Developers' Association of India
❖ DLF	Delhi Land and Finance
❖ EWS	Economically Weaker Section
❖ FDI	Foreign Direct Investment
❖ FSI	Floor Space Index
❖ GST	Goods and Service Tax 2017
❖ HDIL	Housing Development and Infrastructure Ltd.
❖ ICRA	Investment Information and Credit Rating Agency of India Ltd.
❖ IREI	Indian Real Estate Industry
❖ MHADA	Maharashtra Housing and Area Development Authority
❖ MOHUA	Ministry of Housing and Urban Affairs
❖ NAREDCO	National Real Estate Development Council
❖ NBCC	National Building Construction Corporation
❖ NBFC	Non-Banking Financial Corporations
❖ NCDRC	National Consumer Dispute Redressal Commission
❖ NGT	National Green Tribunal
❖ NHB	National Housing Bank
❖ PMAY	Pradhan Mantri Awas Yojana
❖ PPP	Public-Private-Partnership
❖ RERA	Real Estate (Regulation and Development) Act 2016
❖ RESSEX	Real Estate Sensitivity Index
❖ RTI	Right to information
❖ SC	Supreme Court of India
❖ SEZ	Special Economic Zone

LIST OF CASES

- *Aluminium Company v. Kaiser Aluminium Technical Services, Inc. (2012), (2012) 9 SCC 552*
- *DDA v. Skipper Construction (2007) 15 SCC 601*
- *Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd. (2024)*
- *Lucknow Development Authority v. M.K. Gupta AIR 1994 SC 787*
- *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu (1999) 6 SCC 464: AIR 1999 SC 2468*
- *M/s. DLF Home Developers Ltd. v. Rajapura Homes Pvt. Ltd. (2021) 2021 (SCC OnLine SC 781)*
- *Malay Kumar Ganguli v. Dr. Sukumar Mukherjee AIR 2010 SC 1162*
- *Vidya Drolia v. Durga Trading Corporation (2021) 2 SCC 1*

ABSTRACT

The real estate sector in India is a major driver of economic growth, contributing significantly to GDP, employment generation, and urban infrastructure development. However, its rapid expansion has been accompanied by a marked increase in disputes involving construction delays, contractual breaches, title defects, land acquisition issues, and regulatory non-compliance. Traditional litigation, while the conventional forum for such disputes, is often hampered by delays, high costs, and a lack of technical expertise, rendering it inadequate for the sector's complex and high-value conflicts. This has spurred interest in alternative dispute resolution (ADR) mechanisms, particularly commercial arbitration, which offers speed, flexibility, confidentiality, and the possibility of appointing subject-matter experts as arbitrators. This thesis critically examines the role of commercial arbitration in resolving real estate disputes in India, focusing on its effectiveness, efficiency, and interaction with allied legal frameworks such as the Real Estate (Regulation and Development) Act, 2016 (RERA) and the Indian Contract Act, 1872. The research investigates the advantages of arbitration such as procedural autonomy and sector-specific expertise while also addressing practical challenges, including limited stakeholder awareness, procedural delays, enforcement barriers, and conflicts with statutory dispute resolution forums. The study adopts an inductive research approach, combining doctrinal analysis of statutes and case law with an empirical survey of 385 stakeholders comprising developers, contractors, homebuyers, legal professionals, and policymakers across Hyderabad, Jaipur, Pune, Gurugram, and Chandigarh. Data was collected using a structured questionnaire and analyzed through descriptive statistics, percentage analysis, graphical representation, and factor analysis. The findings reveal that while arbitration is perceived as more efficient and cost-effective than litigation, its adoption in the real estate sector is hindered by low awareness among certain stakeholder groups, inconsistent enforcement of arbitral awards, and jurisdictional overlaps with RERA. The thesis concludes that commercial arbitration holds considerable potential as a dispute resolution mechanism in the Indian real estate sector, provided that legal, procedural, and institutional reforms are implemented.

Keywords: Real Estate Disputes, Commercial Arbitration, Alternative Dispute Resolution (ADR), RERA, Enforcement Challenges

TITLE
THE ROLE OF COMMERCIAL ARBITRATION IN RESOLVING DISPUTES IN THE REAL ESTATE SECTOR IN INDIA: A CRITICAL ANALYSIS OF ALLIED ACTS AND RECENT CASE LAWS

1. INTRODUCTION

The real estate sector in India is one of the most vital and rapidly growing segments of the Indian economy. It encompasses a wide range of activities including the development of residential, commercial, industrial, and retail properties. In recent years, the sector has experienced significant expansion, driven by urbanization, increasing demand for housing, and growing investment in commercial real estate. However, this growth has been accompanied by a rise in disputes, many of which are complex and involve multiple stakeholders. Disputes in the real estate sector often arise due to issues such as construction delays, contractual breaches, title disputes, land acquisition problems, regulatory non-compliance, and issues related to financing. Given the scale of the sector and the diverse nature of the disputes, resolving these issues in a timely and cost-effective manner has become a significant challenge.

Historically, disputes in India's real estate sector have been resolved through traditional litigation in courts. However, the judicial process in India is often slow, burdened with backlog cases, and can be costly. This has made conventional litigation an undesirable option for resolving disputes in the real estate sector. The need for a more efficient, timely, and specialized approach to dispute resolution has led to the rise of alternative dispute resolution (ADR) mechanisms, particularly commercial arbitration. Arbitration, as an alternative to litigation, provides a forum for resolving disputes that is less formal, quicker, and more flexible. These characteristics are especially useful in the real estate sector, where the stakes are often high, and the complexity of the disputes demands specialized knowledge and expertise.

Commercial arbitration has become a preferred method for resolving disputes in several sectors, and the real estate sector is no exception. Arbitration offers a private and confidential process for resolving conflicts, which can be especially beneficial in real estate transactions involving sensitive commercial information. It allows the parties to choose arbitrators with expertise in

construction, real estate law, and related fields, which leads to more informed and specialized decisions. Moreover, arbitration is more flexible compared to court proceedings, as parties have greater control over the process, including the selection of arbitrators, the place of arbitration, and the procedural rules. The Arbitration and Conciliation Act, 1996, which governs the arbitration process in India, plays a pivotal role in making arbitration a legally recognized and effective means of resolving commercial disputes.

The Arbitration and Conciliation Act, 1996, introduced reforms to modernize and streamline the arbitration process in India. Over the years, the Act has been amended several times to enhance its efficiency, reduce delays, and make India a more attractive jurisdiction for arbitration. The Act provides the legal framework for conducting domestic and international arbitrations, enforcement of arbitral awards, and the role of courts in arbitration proceedings. It has played a crucial role in promoting arbitration as a viable alternative to litigation in commercial disputes, including those in the real estate sector. The Act also includes provisions for arbitration clauses in contracts, which are essential in the real estate sector where long-term agreements between developers, contractors, and other parties are common.

Arbitration is particularly relevant in the context of real estate because many of the disputes in this sector are complex and technical in nature. They often require specialized knowledge about construction practices, project management, land laws, and real estate transactions. Arbitration allows for the appointment of experts in these areas, ensuring that disputes are handled by individuals who are knowledgeable about the specific issues at stake. This is in contrast to litigation in court, where judges may not always possess the same level of expertise in these areas. As a result, arbitration is often seen as a more effective mechanism for resolving disputes in the real estate sector, where technical expertise and understanding of industry practices are critical.

In recent years, case law has played an instrumental role in shaping the practice of commercial arbitration in India. Several landmark judgments by the Supreme Court of India and various High Courts have clarified and refined the legal principles governing arbitration in India. These decisions have helped streamline the arbitration process and address challenges such as the enforcement of foreign arbitral awards, the appointment of arbitrators, and the grounds for challenging arbitral awards. One of the most notable landmark decisions is the Bharat

Aluminium Company v. Kaiser Aluminium Technical Services, Inc. (2012) case, which established important principles concerning the applicability of the public policy ground in setting aside arbitral awards. Such judicial interventions have had a significant impact on arbitration in real estate disputes, providing clearer guidance on how arbitration should be conducted and what legal standards should be applied.

The impact of recent case law is especially important in the context of real estate disputes, where parties often have significant financial and commercial interests at stake. Judicial interpretation of arbitration laws can influence how arbitration clauses are drafted in real estate contracts, the enforceability of these clauses, and the conduct of arbitral proceedings. In *M/s. DLF Home Developers Ltd. v. Rajapura Homes Pvt. Ltd. (2021)*, the Supreme Court upheld the validity of arbitration clauses in real estate agreements despite the presence of RERA. The Court clarified that RERA does not bar arbitration where parties have contractually agreed to it, reaffirming the principle of party autonomy and allowing both frameworks to coexist. This decision strengthened the enforceability of arbitration in real estate contracts.

In *Vidya Drolia v. Durga Trading Corporation (2021)*, the Supreme Court laid down a four-fold test to determine non-arbitrable disputes and held that property-related contractual disputes, including those involving lease or tenancy, are generally arbitrable unless governed by special statutes like rent control laws. This ruling provided critical clarity on the arbitrability of real estate and property disputes and reinforced the legal validity of arbitration in such matters.

Despite the advantages of arbitration, there are challenges in its application to real estate disputes. One of the key concerns is the enforceability of arbitral awards. While the Arbitration and Conciliation Act provides mechanisms for the enforcement of awards, there are still instances where courts are reluctant to enforce certain arbitral awards, especially in cases where they involve public policy issues or where the award is seen as unjust. This issue has been particularly pronounced in the real estate sector, where large-scale construction projects often involve government contracts and complex commercial arrangements. Ensuring that arbitral awards are enforceable and that arbitration remains an attractive dispute resolution mechanism is critical to the success of arbitration in the real estate sector.

Another challenge is the lack of awareness and understanding of arbitration among real estate stakeholders. While arbitration is often included in real estate contracts, developers, contractors, and homebuyers may not fully understand how the arbitration process works or how to enforce arbitration clauses effectively. This lack of understanding can lead to disputes over the validity of arbitration clauses or the process of appointing arbitrators. Education and awareness campaigns about arbitration and its benefits, particularly in the real estate industry, can help improve the effectiveness of arbitration in resolving disputes.

In light of these developments, this thesis aims to provide a critical analysis of commercial arbitration in real estate disputes in India. By examining the legal framework, the relevant acts, recent case laws, and the challenges and opportunities in the field, this study will shed light on how arbitration is shaping the resolution of disputes in India's real estate sector. The goal is to understand how arbitration is functioning as an alternative to litigation, its effectiveness in resolving disputes, and what reforms are necessary to make it a more robust and reliable mechanism for dispute resolution in the real estate industry.

Through this analysis, the thesis will contribute to a better understanding of the intersection between commercial arbitration and real estate law in India. By identifying the strengths and weaknesses of the existing system, this work will provide valuable recommendations for improving arbitration practices in real estate disputes. This will not only benefit stakeholders in the real estate sector but also contribute to the broader development of alternative dispute resolution in India.

2. REVIEW OF LITERATURE

Under this research work, the researcher has reviewed a number of books and articles available at different plate-form. Recent literature on commercial arbitration in India's real estate sector underscores its growing significance as an alternative dispute resolution mechanism. The review of literature particularly contains the following research materials:

The **Maharashtra Real Estate Appellate Tribunal (MREAT) in 2025** quashed a directive by the Maharashtra Real Estate Regulatory Authority (MahaRERA) that mandated arbitration in a real estate dispute. MREAT emphasized that the Real Estate (Regulation and Development) Act,

2016 (RERA), has retroactive applicability and that its jurisdiction is not ousted by pre-existing arbitration clauses in sale agreements.

Alajangi Nidisha (2024) highlights that arbitration offers a more efficient and specialized forum for resolving complex real estate disputes, such as construction delays and contractual breaches, compared to traditional litigation. This is particularly pertinent given the sector's rapid expansion and the increasing complexity of transactions.

Further, **Udupa R. Saanvi (2024)** analysis delves into the interplay between arbitration and mediation in real estate disputes. Udupa suggests that integrating both mechanisms can provide a more holistic approach to dispute resolution, accommodating the diverse interests of stakeholders involved in real estate projects.

Additionally, the 2024 Supreme Court ruling in ***Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd. (2024)*** serves as a critical reference point. The Court invalidated an arbitral award on the grounds of patent illegality, highlighting the judiciary's active role in scrutinizing arbitral decisions, especially in public infrastructure projects.

Chikkara Mukul (2021) in his article concentrates on the domains and modifications that have occurred subsequent to the enforcement of "The Real Estate (Regulation and Development) Act, 2016." Second, it examines the extent to which such legislation has limited the exercise of the Consumer Protection Act of 2019. Thirdly, it tackles the issue that whether RERA is a more beneficial forum than the consumer forum? In response to all these questions, the author inscribes that consumers are given protection under "the Consumer Protection Act" "in addition to the remedies available under any other statute." While it offers an alternate or additional remedy, it does not supersede the remedies provided by another law or Act. Concluding his remark, the author wind up as there are some uncertainties in The Real Estate (Regulation and Development) Act, 2016 because it has not been framed properly with regard to redress mechanism but the Consumer Protection Act, 2019 has filled that gap with offering more options to the home buyers.

Prasad M.V. Durga (2020) explains the need and nature of regulatory laws. He expresses that regulatory laws are not new to Indian Legal System. The business in India has been regulated by

the *Indian Contract Act, 1872, The Indian Electricity Act, 1910, Sale of Goods Act, 1930, Negotiable Instruments Act, 1881, Industrial Disputes Act, 1947, Factories Act, 1948, Banking Regulation Act, 1948,* etc. The traditional regulatory mechanism involving legislation and rule making, execution and implementation and the adversarial dispute resolution are found inadequate. The focus has to be shifted from macro to the sectoral and from state/local to national regulation. In any welfare economy, it is always need for regulatory body functioning under regulatory framework. It requires involvement of experts, professionals and the stake holders as well, in addition to traditional players. The Author is of opinion that the most important feature of the Real Estate (Regulation and Development) Act, 2016 is the constitution of a Regulatory Authority, which regulates the industry through registration. It adjudicates the complaints and appoints adjudicating officers. However, the Act has no effect whatsoever on the administration, which has to issue the permissions and other clearances in the real estate development. Keeping them outside the regulation is lackadaisical and lopsided. It would have been appropriate if the Act empowered the Authority to take action against authorities for delaying permissions and clearances.

Goyal Kapil (2019) has authored the factor behind the rising up of Real Estate (Regulation and Development) Act, 2016, the structure of RERA, the provisions of the Act along with commentary and its prospective impact on real estate infrastructure as well as economy of the nation. Several possibilities are anticipated by author after implementation of the Act. He anticipates that the expenses for developers would rise because sales can only occur after registration, which is only achievable after obtaining approvals. Builders, developers and promoters cannot advertise/promote any project, without quoting a RERA registration number and website address which will ultimately increase in project launch time and project cost. Compliance cost shall increase due to registration of each project to the authorities. The implementation of RERA is expected to lead to market consolidation, resulting in a reduced number of market participants.

Agarwal Kumar Ramesh and Srivastava Manish (2019) in their article have categorised the real estate fraud in to different categories. Further, they aim to uncover the some major real estate frauds and the role of government to curb those frauds. The study focused on the advantages of the Real Estate (Regulation and Development) Act, 2016 for developers and purchasers, in addition with discussing the significance of fraud prevention mechanisms. The

real estate scams like Adarsh housing society, Karnataka Wakf Board land scam, the Noida land scam, the Emaar properties scam, and Rangmahal Cooperative Group housing scheme are expressed in the article. Title deception, hurried sales, assured returns, possession delays, forced cancellations, unauthorised sales, plan changes, selling the same unit to several buyers, and encroachments are some of the various forms of real estate fraud. Moreover, the authors have attempted to portray some strategies to avoid fraud. Some of them are to be observed by buyers while purchasing property as- developers' track record, detail project report including the RERA approval, recourse of professional advice; look for paper for originality check.

Malik Surendra and Malik Sudeep (2018) has compiled many Supreme Court decisions on vivid dimensions of real estate since 1950 to 2018. The researcher has gone through the cases pertinent to real estate project. In this connection, the author has mentioned various cases out of which few are mentioned here. In "*M.I. Builders (P) Ltd. v. Radhey Shyam Sahu*" the honourable Supreme Court held, "no consideration should be shown to the builder or any other person where construction is unauthorised." This statement is now nearly approaching the status of legal precedent. In "*Lucknow Development Authority v. M.K. Gupta*", the S. C. scrutinized the extent of protection offered by the Consumer Protection Act of 1986 with reference to housing or building activities. The directive mandates that all builders, developers, or constructors must comply with the provisions of the Act. In "*Malay Kumar Ganguli v. Dr. Sukumar Mukherjee*", it was decided that a consumer forum or commission is not a civil court. In "*DDA v. Skipper Construction*", it was observed that in the event of fraud on prospective buyers, the builder are responsible to refund the deposit fraudulently obtained. However, apart from the aforementioned book, the researcher has also visited on various online sites e.g. www.livelaw.in, www.barandbench.com, www.indiankanoon.org etc. to be acquaint.

Sharma Sharmishtha (2018) in her article mentions that the main goal of the Real Estate Regulation (Development and Authority) Act, 2016 was to rebuild customer trust by regulating the transactions and business practices in the real estate industry. While noting the impact of the Act on Indian economy, the author expressed that Demonetization, GST, and RERA were three measures that were implemented simultaneously and had a variety of impacts on the Indian economy at the time. Following a six-month period of demonetization, the implementation of RERA had a negative impact on the real estate market once more. Due to the absence of employment prospects for labourers, RERA had a direct negative effect on small-scale

developers and contractors in metropolitan regions. Many proposed real estate projects were either closed down or postponed until they were registered with the RERA. The Act's vagueness adds to the mechanism's complexity. For instance, although the Appellate Tribunal has the authority as equal to that of a civil court, the same is not governed by the Civil Procedure Code, 1908. In concluding remark, the author asserts that the present legislation has been designed and implemented with consideration for the unique features of the Indian real estate industry. The Act will fully accomplish its goal with continuous updating in accordance with changes in the economy.

Rab Ajar (2017) focuses on the legislative background of the Real Estate (Regulation and Development) Act, 2016 its key aspects, and the ways in which its provisions further the goals outlined in the preamble. The findings of the author is that examining the provisions more closely and critically reveals that the Act is deficient in several areas and it would be difficult to put several of the provisions into practice. The salient feature of Model Law, 2009, Draft Bill, 2011, The Real Estate (Regulation and Development) Bill, 2013, The Real Estate (Regulation and Development) Bill, 2015 are discussed while dealing the historical aspect of the Act. While criticising the Act, the author finds that threshold applicable under the Act logically leaves out real estate agents associated in transactions of lower magnitude and hence, does not fulfil its goal of reducing fraud and making the real estate agents responsible. Even after five years of giving up ownership, the builder is required by Section 14(3) of the Act to repair problems within 30 days or pay compensation for them. For small flaws that could have resulted from use, normal wear and tear, or customer negligence, without the need for additional documentation and verification, buyers may register complaints against the builders. The builder faces significant burdens due to this rule, and there is a strong potential for abuse. Therefore, this paper contends that the euphoria around the victory of consumer rights and builders being at the mercy of consumers is wrong and premature.

Bhargava (2017) has incorporated the provisions specified in the Real Estate (Regulation and Development) Act, 2016 concerning the registration procedure for real estate projects and agents, the duties and obligations of promoters, the entitlements and responsibilities of allottees, the formation of the Real Estate Regulatory Authority, Central Advisory Council, and the Real Estate Appellate Tribunal, as well as clauses pertaining to violations, sanctions, and resolution, substantiated by pertinent legal precedents. The author is optimistic that the enactment of this

legislation will improve accountability towards consumers and significantly reduce occurrences of fraud and delays. The aim of the enactment is to ensure equal approach to information for both promoters and purchasers, promote clarity in contractual terms, set basic standards of accountability, and implement an efficient dispute resolution procedure. It is expected that this will promote professionalism and standards in the industry, ultimately promoting rapid expansion and attracting long-term investments.

Natarajan K. and Nedunchezhiyan B. (2016) have compiled the Rules and Regulations regarding real estate applied in different States including the Real Estate (Regulation and Development) Act, 2016 along with case laws. In this book, the authors have explained the provisions with regard to transparency, accountability, bureaucracy, judiciary, right and duties of promoter, allottees, and agents under The Real Estate (Regulation and Development) Act, 2016. The authors have expressed that the implementation of the bill/regulation cannot be too harsh when a developer is dependent on other agencies to deliver a project. This regulation should encompass all stakeholders. The Act in its present form will choke the real estate business as it does not address the issue of delay caused by the clearance /sanctioning authority for which developers are unfairly held responsible. In the short run, the Act does ensure security and safety to consumers and seems a lot beneficial, however, in the long run, it might disrupt the industry as a whole, killing competition and expansion prospects which might generate monopoly tendencies and thus may prove to be detrimental to the bona fide purchaser.

Henilane Inita (2016) has stated in his paper that the State must ensure that social risk groups or groups at risk receive help through various services or instruments, as well as interfere in the portion of the housing market that is ineffective. The author has sought the general definition of "Housing" and its classification, which would be depending upon multiple variables that could be followed in developing and implementing the housing policy as well as for statistics in Latvia and in other EU countries. The author writes dwellings are traditionally characterised in Europe as a collection of associated premises that are physically isolated from the outside world and comprise various technical aspects such as windows, doors, roofs, walls, and engineering communications. The author has classified the housing on the different parameter such as housing type, size, amenities, location, group of population living in the house, type of ownership rights, construction period, materials used in construction. While concluding the

author expresses that the process of state intervention in the housing market is connected to housing policy.

Aalberts J. Robert and Siedel J. George (2009) have described the real estate transaction, including forms of ownership, the role of real estate professionals, real estate contracts, title, financing, the closing, and landlord and tenant law under part II of the book. They outline 'Estates' can be classified into one of two legal categories: Freehold and Leasehold. They strive to find out the real meaning of "Estate" and conclude that word "Estates" has multiple connotations. Throughout mediaeval Europe, a person's status was determined by their estate; the clergy, nobles, and commoners were the typical estates. The term "estate" denoted social standing. For instance, following the Battle of Hastings in 1066 AD, William the Conqueror established the principal tenants, also known as "tenants in capite," as the greatest noble class or estate in England.

Narasimha D. Rao and Gupta Subhashish (2006) have focused on the need and role of regulation along with its critique. As per author independent regulation has been evolved as a fourth branch of government. Infrastructure sector regulation comprises overseeing a combination of markets and monopolies, directing investment and industry change, and defending the rights of consumers. While defining regulation, it is expressed that the mechanism adopted to government intervention in industry is regulation. Regulation typically comprises intervention with regard to procurement, quality, entrance, pricing, and market structure. Regulation's primary goal is to reduce market failure and has always implied the existence of private ownership.

Kalin H. Christian (2005) has explained the scope of acquisition, form of ownership, sale of real estate residence, tax and inheritance law in various countries including United Kingdom, USA (special emphasis on Florida), France, Austria, Italy, Switzerland, Portugal, etc. The author has noted that in Switzerland, property is protected by the Federal Constitution, which clearly and concisely states in Article 26(1), "Private property is guaranteed." Property law is governed by the Civil Code. Public authentication is always required for sales agreements, provisional agreements, and agreements on buy and repurchase rights pertaining to real estate. He further writes that In England, real estate registration dates back to 1925. The foundational idea of freedom of contract in English law is that parties may agree to anything as long as it is not illegal

or limited. Under parliamentary legislation known as the Town and Country Planning Acts, or, to put it more succinctly, the Planning Acts, new construction is subject to the issuance of building permits, sometimes known as "planning consents," by local authorities. While depicting the real estate transaction in U.S.A., all new construction and rehabilitation work requires a construction permit from the county authority. Following construction, and before acceptance, a walk-through is typically conducted by the general contractor and the buyer, during which any construction flaws are noted and added to a punch list.

Pande C. Dinesh (1971) in his edited book has given a prominent place to the views expressed by M. Hidayatullah, Morarji Desai, Fakhruddin Ali Ahmad, S.N. Jain, M.P. Jain, S.P. Sathe, M. K. Venkatachalam etc. over government regulation of private enterprise, policy issues in government regulation, extent and limits and the power of the Union to regulate the economy and problems of regulation. In the words of M. Hidayatullah, the then Chief Justice, Supreme Court of India, our country has given ample evidence of State regulation. The fixing of minimum wages, hours of work, quality control and fair distribution of wealth are all measures intended to better our economy. They do mean interference with freedom of contract and freedom of action. But it is necessary that this should be so. A certain measure of control of industry and private enterprise is absolutely necessary. Morarji Desai is of opinion that the Government has to control development and see that things are regulated, but the purpose of all control is not restriction but it is development and advancement. S.N. Jain has opined that regulation has to be such that it does not hamper the development of private enterprise but enable it to flourish the socialist pattern of society.

Jain M. H. (1968) has found that property is the result of social acknowledgment and the advancement of the economy. Since real estate is also an instance of property, so it is pertinent to enquire in to right and duties annexed with it. The State has the ultimate responsibility for determining the level of assurance for the right to property. It exercises control over social recognition and facilitates economic growth. The right to property is a reflection of a State's social and political philosophy and is a vital aspect of its political system. The author also gives space to the views of various jurists such as Rousseau, Locke, Aristotle, Hegel, Bodin, Marx, Laski, etc. with regard to connotation of property in his literature. According to Rousseau, property is considered a fundamental and highly respected element of citizenship. As per Laski's perspective, the existence of all property is dependent on the backing of society, rendering its

rights socially constituted. Hegel contended that property is essential for people to manifest themselves. Locke's definition of property refers to the share of natural resources that individuals have acquired through their labour. Further, Author writing in textbook expresses that while discussion in the constituent assembly the right to private property was described as “soul of the constitution”, as “one of the most wonderful example of chaos and confusion of ideas”, “as a magna charta in the hands of the capitalists of India”, as “the darkest blot on our constitution”, as “a most revolutionary provision”, and so on.

Apart from the abovementioned books and articles, the researcher has visited many other literature to enquire in to the vivid dimensions of real estate project.

3. RESEARCH GAP

1. Limited empirical studies specifically measuring the practical effectiveness of commercial arbitration in India’s real estate sector, particularly comparing it directly with litigation in terms of time, cost, and stakeholder satisfaction.
2. Inadequate exploration of arbitration–RERA interaction, especially in how overlapping jurisdiction affects the enforceability of arbitral awards and the drafting of arbitration clauses in real estate contracts.
3. Scarcity of sector-specific arbitration data, including the proportion of real estate disputes resolved through arbitration, average timelines, and award compliance rates.
4. Lack of stakeholder awareness research, with minimal literature assessing how well developers, contractors, and homebuyers understand arbitration procedures and their rights under the Arbitration and Conciliation Act, 1996.
5. Insufficient analysis of judicial influence, where prior studies have not systematically examined how recent Supreme Court and High Court rulings have shaped the scope, procedure, and enforceability of arbitration in real estate disputes.

4. STATEMENT OF RESEARCH PROBLEM

The real estate sector in India has experienced significant growth over the last few decades, contributing substantially to the country's economy. However, this rapid growth has also resulted in an increase in disputes arising from various issues, including construction delays, contractual

breaches, land acquisition issues, title disputes, and non-compliance with regulatory norms. These disputes often involve multiple stakeholders, including developers, contractors, homebuyers, and government authorities, which makes them complex and difficult to resolve through traditional litigation.

Traditionally, real estate disputes have been handled through the judicial system, which is plagued by delays, high costs, and a lack of specialization in the highly technical nature of real estate issues. As a result, there has been a growing need for efficient and effective dispute resolution mechanisms. Commercial arbitration, as an alternative to traditional litigation, has gained popularity for its flexibility, speed, and ability to provide specialized dispute resolution. Arbitration allows for the appointment of industry experts, making it a more effective way of resolving technical and contractual disputes in real estate transactions. Despite the advantages of commercial arbitration, its application in the real estate sector in India remains underexplored and faces several challenges.

While the Arbitration and Conciliation Act, 1996 has provided a legal framework for commercial arbitration in India, the sector's complexities have raised concerns regarding its effectiveness. Key issues include the enforceability of arbitral awards, the reluctance of parties to adopt arbitration, and the interaction between arbitration and other real estate regulatory frameworks like RERA (Real Estate Regulation and Development Act, 2016). Additionally, there are concerns over the adequacy of judicial support for arbitration, the lack of awareness of arbitration among stakeholders, and the challenges faced in implementing arbitral awards in real estate disputes.

The problem, therefore, lies in the gap between the theoretical advantages of arbitration and its practical challenges in resolving real estate disputes in India. There is a need to critically analyze the role of commercial arbitration in the real estate sector, explore the limitations of the existing legal framework, and identify areas where the system can be improved to make arbitration a more effective tool for dispute resolution in this sector. This research aims to address these concerns, providing insights into how commercial arbitration can be better utilized and improved to resolve real estate disputes efficiently and effectively in India.

5. SIGNIFICANCE OF THE STUDY

The real estate sector in India is a cornerstone of the country's economic growth, contributing significantly to employment generation, infrastructure development, and the country's GDP. However, the rapid growth of the sector has also led to a rise in disputes related to land acquisitions, construction delays, contract breaches, financial mismanagement, and other complex issues. These disputes often involve multiple stakeholders, including developers, contractors, homebuyers, government authorities, and investors, making them highly intricate and difficult to resolve through traditional court procedures. The need for efficient, timely, and cost-effective mechanisms to resolve these conflicts is critical for ensuring the smooth functioning of the real estate market and its sustained growth.

Commercial arbitration has emerged as a promising alternative to traditional litigation in resolving disputes within the real estate sector. Arbitration offers a more flexible, private, and expedited process for dispute resolution. It allows for the appointment of arbitrators with specific expertise in real estate and construction laws, which is particularly advantageous given the technical nature of many real estate disputes. By providing a specialized forum for addressing disputes, arbitration enables parties to avoid lengthy delays and high legal costs that are often associated with court trials. As a result, the adoption of commercial arbitration in real estate contracts has grown, making it an essential aspect of the legal framework governing the sector.

The *Arbitration and Conciliation Act, 1996* forms the backbone of the arbitration process in India, establishing clear guidelines for arbitration proceedings, the enforcement of arbitral awards, and the jurisdiction of courts in arbitration matters. With continuous reforms, such as the 2015 amendment, the legal framework surrounding arbitration has become more robust, aiming to improve the efficiency and effectiveness of the process. However, despite these reforms, challenges still exist in the real estate sector regarding the enforceability of arbitral awards, the reluctance of parties to engage in arbitration, and the lack of awareness about the advantages of arbitration.

Given the increasing reliance on commercial arbitration in the real estate industry, the relevance of this thesis lies in its ability to critically examine the *role of arbitration* in resolving disputes in this sector. By analyzing the relevant laws, judicial trends, and practical challenges, this study

seeks to evaluate how effective arbitration has been in resolving real estate disputes and identify areas where the system can be improved. Furthermore, this research contributes to the ongoing discourse on *alternative dispute resolution (ADR)* in India, providing valuable insights into how commercial arbitration can be leveraged to promote a more efficient, transparent, and accessible dispute resolution process within the real estate sector. This research is essential not only for legal scholars but also for practitioners, developers, and policymakers working to enhance the dispute resolution mechanisms in the real estate industry.

6. RESEARCH OBJECTIVES

Main objectives of this study may be summarized as follows:

1. To examine the role of commercial arbitration in resolving disputes in the real estate sector in India, focusing on its effectiveness and efficiency compared to traditional litigation.
2. To analyze the legal framework governing commercial arbitration in India, particularly the provisions under the Arbitration and Conciliation Act, 1996, and their application in real estate disputes.
3. To explore the key challenges and limitations faced by parties in the real estate sector when resorting to arbitration for dispute resolution.
4. To evaluate the interaction between arbitration and other legal frameworks in the real estate sector, such as RERA, and assess how they complement or conflict.
5. To evaluate the enforceability of arbitral awards in real estate disputes and explore the challenges faced by parties in enforcing such awards.
6. To assess the role of judicial interpretation in shaping arbitration practice in real estate disputes.
7. To suggest legal and procedural reforms to strengthen the role of commercial arbitration in the Indian real estate industry.

7. RESEARCH QUESTIONS

1. How effective is commercial arbitration compared to traditional litigation in resolving disputes in India's real estate sector?
2. What are the key legal and procedural challenges in enforcing arbitral awards in real estate disputes under the Arbitration and Conciliation Act, 1996?
3. To what extent are stakeholders in the real estate sector developers, contractors, homebuyers aware of and willing to adopt commercial arbitration as a preferred dispute resolution mechanism?
4. In what ways do the provisions of RERA interact or conflict with arbitration clauses in real estate contracts?
5. What are the key legal and procedural challenges in enforcing arbitral awards in real estate disputes under the Arbitration and Conciliation Act, 1996?
6. How do judicial interpretations in India influence the practice and effectiveness of commercial arbitration in resolving real estate disputes?
7. What legal reforms or procedural improvements are necessary to strengthen the role of commercial arbitration in the Indian real estate industry?

8. RESEARCH HYPOTHESES

For the present study the following hypotheses have been formulated:

1. **H_1:** Commercial arbitration is a more efficient and cost-effective mechanism for resolving real estate disputes in India compared to traditional litigation.
2. **H_2:** The lack of awareness and understanding of commercial arbitration among real estate sector stakeholders limits its widespread adoption.
3. **H_3:** The interaction between arbitration and RERA creates challenges in the enforcement of arbitral awards.
4. **H_4:** Judicial interpretations have a significant influence on shaping the effectiveness of commercial arbitration in real estate.

9. RESEARCH METHODOLOGY

The methodological approach for this study is Mixed- method research which is based on the analysis of primary and secondary legal sources.

- **Research Design:** Mixed method approach will be adopted.
- **Universe of the study**: Hyderabad, Pune, and Chandigarh.
- **Sample technique:** Random and Purposive sampling
- **Sample size:** 500 stakeholders
- **Sources of Data:**

  Primary Sources of Data- The questionnaire and interview (if needed) with the stakeholders will be used to collect primary data.

  Secondary Sources of Data- Law books, articles, law database, regulations, law reports, statues and policies, judicial pronouncements will be used to complete doctrinal part of the study.

Stakeholders:

1. Builders, Developers and Contractors
2. Construction Companies
3. Home buyers,
4. Govt. Officials and Policy Makers
5. Legal Experts/ Legal Professionals.

10.SCOPE AND LIMITATIONS OF STUDY

SCOPE

The scope of this research is focused on analyzing the role of commercial arbitration in resolving disputes within the real estate sector in India, with an emphasis on understanding its effectiveness and efficiency compared to traditional litigation methods. The study will primarily address the legal framework governing commercial arbitration, particularly the Arbitration and Conciliation Act, 1996, and other relevant legal provisions such as the Real

Estate (Regulation and Development) Act, 2016 (RERA) and the Indian Contract Act, 1872. The research will explore how these laws interact with arbitration processes and their influence on the resolution of disputes in real estate transactions, including those involving construction delays, contractual breaches, title disputes, and land acquisition issues.

In terms of geographical focus, this research will specifically examine the Indian legal landscape and its approach to commercial arbitration in the context of real estate. It will evaluate the impact of recent case laws, judicial interpretations, and arbitration-friendly policies on the real estate sector, identifying how judicial trends have shaped the effectiveness of arbitration. The study will also assess the role of specialized arbitrators with expertise in real estate and construction laws, ensuring that disputes are resolved by individuals who understand the technical complexities of the sector.

The research will cover the perspectives of key stakeholders, including real estate developers, contractors, homebuyers, legal professionals, and arbitrators, analyzing how these parties engage with and utilize commercial arbitration for dispute resolution. A significant portion of the research will be dedicated to comparing arbitration with traditional litigation methods, evaluating how arbitration offers a more efficient, cost-effective, and specialized means of resolving disputes. Additionally, the study will examine the enforceability of arbitral awards in real estate disputes and address challenges in ensuring compliance with these awards.

Finally, the research will propose policy recommendations to improve the arbitration process within the real estate sector. This will include suggestions for legislative and procedural reforms that could enhance the efficiency and accessibility of arbitration, making it a more attractive option for resolving disputes in India's real estate market. The scope of the study will thus provide a comprehensive and critical analysis of the current state of commercial arbitration in the real estate sector and its potential for future development.

LIMITATIONS OF THE STUDY

1. **Geographical Focus**: The study is confined to India's real estate sector, mainly urban and metropolitan areas, limiting generalizability to rural regions or international contexts.
2. **Sample Bias**: Despite efforts for diversity, the 385 respondent sample may overrepresent developers and legal professionals, potentially skewing findings due to their higher awareness of arbitration.

3. **Data Sensitivity**: Confidentiality concerns may limit participants' willingness to share complete or honest insights, especially in ongoing or high-stake arbitration cases.
4. **Varying Awareness Levels**: Stakeholder understanding of arbitration varies, particularly among homebuyers, which may affect the accuracy and depth of their responses.
5. **Limited Real-Time Data**: The confidential and ongoing nature of many arbitration cases restricts access to up-to-date information, limiting analysis of recent trends.
6. **Judicial Evolution**: The study relies on available judgments, which may not fully reflect the latest judicial trends or long-term implications due to the dynamic nature of case law.
7. **Narrow Legal Scope**: While centered on the Arbitration and Conciliation Act, 1996, the study only partially addresses other relevant laws like RERA, the Indian Contract Act, and land-related statutes, possibly limiting a broader legal perspective.

11.EXPECTED OUTCOME

1. The study is expected to provide a critical assessment of how commercial arbitration functions in resolving real estate disputes in India, highlighting its advantages over traditional litigation in terms of speed, cost, expertise, and confidentiality.
2. The research aims to uncover the key obstacles hindering the effectiveness of arbitration in the real estate sector, including issues of enforceability, overlap with RERA, judicial reluctance, and stakeholder awareness gaps.
3. Based on the findings, the study will propose concrete reforms and practical measures to strengthen the arbitration framework within the real estate sector, ensuring more efficient, accessible, and enforceable dispute resolution mechanisms.

12.RESEARCH TIMELINE

S No.	Research Phase	Objectives	Sept., 2025	July, 2026	Dec, 2026	Sept, 2027	Jun, 2027	Sept, 2027
1	Background research and literature review	• Meet with Supervisor Madam						
		• Conduct a more extensive review of relevant literature						
		• Refine the research questions						
		• Develop a theoretical framework						
2	Research design planning	• Design questionnaires						
		• Identify online and offline channels						
		• Finalize sampling methods and data analysis methods						
3	Data collection and preparation							
		• Transcribe and code interviews and clean survey data						
4	Data analysis	• Statistically analyze survey data						
		• Draft the results and discussion chapters						
5	Writing	• Complete a full thesis draft						
		• Meet with Supervisor Madam to discuss feedback and revisions						
6	Revision	• Redraft based on feedback						
		• Get Supervisor Madam approval for final draft						
		• Proofread						
		• Print, bind and submit						

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